

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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In the Matter of the Application of  
Shimmick Construction Co., Inc. for a  
Variance from General Order 26-D and/or  
the Application of General Order 143-B  
Requirements for Side Clearances at the  
Transit Vehicle Maintenance and Service  
Yard of the Sonoma Marin Area Rail  
Transit District in Santa Rose, California.

Application 16-09-007  
(Filed September 6, 2016)

**PROTEST OF THE  
SAFETY AND ENFORCEMENT DIVISION**

**SHANNA FOLEY**

Attorney

Safety and Enforcement Division  
California Public Utilities Commission  
320 W 4th Street, Suite 500  
Los Angeles, CA 90013  
Telephone: (213) 620-2465  
E-mail: [Shanna.Foley@cpuc.ca.gov](mailto:Shanna.Foley@cpuc.ca.gov)

**PATRICK S. BERDGE**

Attorney

Safety and Enforcement Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Telephone: (415) 703-1519  
E-mail: [Patrick.Berdge@cpuc.ca.gov](mailto:Patrick.Berdge@cpuc.ca.gov)

October 10, 2016

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**I. INTRODUCTION**

Pursuant to the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Title 20, California Code of Regulations (“Rules”), Rule 2.6, the Office of Rail Safety (“ORS”) of the Commission’s Safety and Enforcement Division (“SED”), respectfully submits this protest to the application of Shimmick Construction Co., Inc. (“Shimmick” or “Applicant”) for a variance from the safety requirements of General Order 26-D.

This proceeding appeared in the Commission’s Daily Calendar on September 12, 2016. As such, this protest is timely filed pursuant to Rules 1.15 and 2.6(a).

**II. GROUNDS FOR PROTEST**

The Commission’s General Order (“GO”) 26-D establishes the minimum side clearance requirements for railroads. In other words, the GO sets forth the “shortest distance from the center line of track to a structure or obstruction at the side of the

track.”<sup>1</sup> Consistent side clearances are essential to protecting railway workers who often ride on the side of trains or otherwise come into contact with various obstructions while walking a portion or the length of the train.

In its Application, Shimmick requests a variance from GO 26-D’s side clearance requirements for various facilities that it is currently constructing at the Sonoma Marin Area Rail Transit District (“SMART”) Transit Vehicle Service Yard in Santa Rosa, California.

As Shimmick acknowledges in its Application, SED conducted a safety inspection of the Transit Vehicles Service Yard at issue. SED found multiple safety violations including four violations related to side-clearances. More specifically, SED found that the side clearances on three fuel reel boxes and the transit vehicle washing station were between 71 to 75 inches, whereas GO 26-D requires a minimum side clearance of 94  $\frac{3}{4}$  inches.<sup>2</sup>

Alternatively, Shimmick argues that if a variance to GO 26-D’s side clearance safety requirements is not granted, the Commission should apply the clearance requirements for smaller, light rail vehicles set forth in GO 143-B. However, even Shimmick itself acknowledges that the SMART transmit system does not consist of light rail vehicles and is thus not subject to the requirements set forth for light rail vehicles in GO 143-B.<sup>3</sup>

SED opposes Shimmick’s request for a variance from the side clearance safety requirements as well as its request to conform to the inapplicable requirements found in GO 143-B, and protests this application on the following grounds:

1. Side clearance requirements are important safety requirements, which, if not abided by, leave workers in the Vehicle Service Yard at risk for severe injury or death.

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<sup>1</sup> General Order 26-D, Paragraphs 1.5 (definition of “side clearance”).

<sup>2</sup> GO 26-D, Paragraph 9.2 requires a side clearance of 30 inches from the side of the widest equipment operated. In this case, the widest train vehicle operated plus 30 inches equals 94  $\frac{3}{4}$  inches.

<sup>3</sup> Application (“App.”) at p. 9.

2. Shimmick’s proposed alternate safety measures, which it states will “minimize”<sup>4</sup> potential dangers posed by its requested side clearance exemptions, are insufficient to replace minimum side clearance protections. Shimmick’s proposed safety guidelines, such as requiring that “All employees within the Transit Vehicle Service Yard must be vigilant at all time,”<sup>5</sup> are an insufficient replacement for side clearance requirements. Shimmick’s proposals are aimed at training employees to be aware of the lack of sufficient side clearances and to avoid dangerous situations that could arise due to the lack of those adequate side clearances. As such, Shimmick’s proposals do nothing to ensure the safety of railway workers in the event of human mistake or error. It is insufficient to simply warn employees about a potential hazard and advise them to avoid it—a railroad system must be designed and maintained safely so that in the event of mistakes or accidents, a tragedy does not occur.
3. The Applicant’s assertion that the Transit Vehicle Service Yard is not accessible to the public and will not be used by any freight rail trains or other cars<sup>6</sup> is irrelevant where side clearance requirements are needed to prevent injury to the workers in the Vehicle Service Yard.
4. Shimmick’s argument that the fuel reel and train washing facilities at issue would be “prohibitively expensive”<sup>7</sup> is unsupported. Shimmick acknowledges that “A detailed estimate has not been performed.”<sup>8</sup> As such, the figures presented in its Application are only speculative and seem to be based on environmental permitting and other costs for the entire SMART transit project. Moreover, Shimmick had an opportunity to request a Commission staff review of the plans for these facilities prior to construction but failed to take advantage of staff review and instruction on applicable Commission safety rules.
5. Shimmick has not justified its request to essentially be treated as a light rail system subject to GO 143-B instead of GO 26-D.

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<sup>4</sup> App. at p. 7.

<sup>5</sup> App. at p. 7.

<sup>6</sup> App. at p. 3.

<sup>7</sup> App. at p. 6.

<sup>8</sup> App. at p. 6.

Shimmick argues that because the vehicles used in the SMART system are smaller than freight trains, the Commission can opt to apply the side clearance requirements found in GO 143-B. However, in this case, SMART's Diesel Multiple Unit ("DMU") trains are regulated by the Federal Railroad Administration ("FRA") as heavy rail. Further, since the SMART vehicles are on a shared track with larger freight vehicles, FRA rules require that it comply with the FRA's temporal separation rules and may operate only during specified hours while freight vehicles operate during different hours. Thus, SMART cars are considered heavy rail and regulated by the FRA. Since SMART is heavy rail, it must comply with railroad safety requirements. SMART cannot be permitted to pick and choose which set of requirements it would like to comply with.

### III. CONCLUSION

For the above stated reasons, SED protests Shimmick's Application for a variance from the safety requirements set forth in 26-D. Shimmick should not be granted an exemption from the side clearance safety requirements, nor its vehicles treated as light rail vehicles subject to GO 143-B for side clearance purposes.

Finally, SED requests a prehearing conference establishing a proceeding schedule and a hearing in this matter.

Respectfully submitted,

PATRICK S. BERDGE  
SHANNA FOLEY

/s/ PATRICK S. BERDGE

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Patrick S. Berdge  
Attorney

Safety and Enforcement Division  
California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102  
Telephone: (415) 703-1519  
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